

DRINKER BIDDLE & REATH LLP

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDING CORPORATION, *et al.*¹

Debtors.

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

**REFRESCO BEVERAGES US INC.'S REQUEST FOR
ALLOWANCE AND PAYMENT OF ITS ADMINISTRATIVE EXPENSE CLAIMS**

Refresco Beverages US Inc. ("Refresco"), by its attorneys Drinker Biddle & Reath LLP, respectfully submits this request for the allowance and payment of its administrative expense claims (the "Request"), pursuant to 11 U.S.C. §503(a), and respectfully states as follows:

¹ 1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovol Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears B corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

JURISDICTION AND VENUE

1. This court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

RELEVANT BACKGROUND

2. On October 15, 2018 (the “Petition Date”), Kmart Corporation, a debtor and debtor in possession in the above-captioned chapter 11 cases, (the “Debtor” and, with the other debtors and debtors in possession in the above-captioned chapter 11 cases, the “Debtors”) commenced a voluntary case under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in this Court. The Debtors’ chapter 11 cases are being jointly administered for procedural purposes only under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

3. The Debtors have continued to operate and manage their businesses as debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code.

4. Refresco is the world’s largest independent bottler for retailers and A-brands in Europe and North America, combining production of retailer brands and contract manufacturing for branded beverage companies on an effective multiuser production platform that benefits from scale advantages and additional services.

5. From January 2019 through September 2019, Refresco provided the Debtor with goods and recycling services as evidenced by the purchase orders (the “Purchase Orders”) attached hereto as Exhibit A. To date, the Debtor has made no payments on the following Purchase Orders and is indebted to the Claimant in the sum of \$114,940.73:

Invoice#	PO#	Date	Due date	Age	Amount
90914812	8287262894	1/10/2019	2/14/2019	231	\$ 1,814.40
90914813	8275321002	1/10/2019	2/14/2019	231	\$ 4,075.92
90914814	8292277455	1/10/2019	2/14/2019	231	\$ 3,628.80
90914815	8273693326	1/10/2019	2/14/2019	231	\$ 2,736.56
90914816	8289256488	1/10/2019	2/14/2019	231	\$ 4,440.80
90916113	8287262893	1/14/2019	2/18/2019	227	\$ 8,652.80
90917064	8275321001	1/16/2019	2/20/2019	225	\$ 9,719.20
90918018	8292277454	1/18/2019	2/22/2019	223	\$ 8,075.12
90942036	RECYCLING OCT '1	3/22/2019	4/26/2019	160	\$ 29,790.46
90954794	RECYCLING MARCH	4/25/2019	5/25/2019	131	\$ 7,926.30
90965665	RECYCLING APRIL	5/24/2019	6/28/2019	97	\$ 1,685.79
90976725	RECYCLING MAY201	6/21/2019	7/26/2019	69	\$ 11,684.35
90986375	RECYCLING JUNE 2	7/17/2019	8/21/2019	43	\$ 3,970.05
91000435	RECYCLING JULY 2	8/22/2019	9/21/2019	12	\$ 14,333.81
91012424	RECYCLING AUGUST	9/23/2019	10/23/2019	-20	\$ 2,406.37
				TOTAL:	\$114,940.73

6. Section 503(b)(1)(A) provides for the allowance, as an administrative expense, the “actual, necessary costs and expenses of preserving the estate” 11 U.S.C. § 503(b)(1)(A). Here, Fresco provided goods and recycling services to the Debtor after the Petition Date, and in the ordinary course of business, and the Debtors benefitted from the goods and services. Therefore, the amounts owed to Fresco for those goods and services are undisputed administrative expenses of the Debtors that are entitled to priority payment under section 503(b)(1)(A) of the Bankruptcy Code.

RESERVATION OF RIGHTS

7. Fresco expressly reserves the right to amend, modify, or supplement this Request in any way, including, without limitation, to assert additional claims related to (a) setoff, (b) recoupment, (c) indemnification, (d) subrogation, and (e) any of Fresco’s rights under any agreement or under statutory, regulatory, civil or common law, or any equitable relief. This Request is not, nor shall it be deemed to be, (a) waiver or release of Fresco’s rights against any

person, entity, or property, (b) an election of remedies, or (c) a waiver or release of any claims that are currently owing and not identified in this Request and/or claims that may become due and owing to Fresco by the Debtors subsequent to the filing of this Request.

WHEREFORE, Fresco respectfully requests the allowance and payment of its administrative expense claims, failing which Fresco requests entry of an order by this Court directing the payment by the Debtor of \$114,940.73 and for such other and further relief as is just.

Dated: New York, New York
October 22, 2019

DRINKER BIDDLE & REATH LLP

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